

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YESENIA JAVIER MARIA (A.K.A WANDA), *individually
and on behalf of others similarly situated*,

Plaintiffs,

EL MAMBI REST CORP. (D/B/A MAMBI), EL MAMBI
STAKEHOUSE CORP. (D/B/A MAMBI), RAUL
ACOSTA, RAUL RYAN ACOSTA A.K.A RAULITO
ACOSTA, GABRIEL CRUZ-CAPOTE, RAFAELINA
(A.K.A NINA) BAUTISTA, and GIOVANNI BAUTISTA

Defendants.

CA NO. 1:20-cv-03707 (JPO)

**AFFIDAVIT IN SUPPORT
OF DEFENDANTS'
MOTION TO DISMISS
PLAINTIFF'S AMENDED
COMPLAINT**

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

RAUL RYAN ACOSTA, being duly sworn deposes and says the following pursuant to
the penalty of perjury:

1. I am the owner of El Mambi Steakhouse Corp. (hereinafter "Steakhouse") and as such am fully familiar with all facts stated herein.
2. El Mambi Rest Corp. ("Rest Corp.") was formed on June 30, 2006, by Raul Acosta, and thereafter began operating the restaurant currently known as Mambi Steakhouse Bar and Restaurant (hereinafter the "Restaurant"). See Exhibit A.
3. Raul Acosta was the sole owner and operator of Rest. Corp.
4. To my knowledge, during her employment at Rest Corp. Plaintiff punched a clock and was paid in accordance with the labor laws.
5. To my knowledge, during her employment at Rest Corp. Plaintiff was provided wage statements and notices. See e.g. Exhibit B.

6. My business partner Gabriel and I incorporated Steakhouse on September 12, 2017, for the purpose of purchasing the Restaurant from my father, Raul Acosta. See Exhibit C.
7. On October 19, 2017, Steakhouse purchased the Restaurant from Rest Corp. Exhibit D.
8. Gabriel and I are the only managers of Steakhouse.
9. Plaintiff was a waitress at the Restaurant.
10. On or about the last week of January 2020, Plaintiff was caught on camera misappropriating tips that should have gone into the tip pool.
11. Thereafter, she was confronted and terminated from employment at the Restaurant.
12. During her employment for Steakhouse Plaintiff punched a clock and was paid in accordance with the labor laws.
13. During her employment for Steakhouse Plaintiff took all her lunch breaks in accordance with the labor laws.
14. During her employment for Steakhouse Plaintiff's schedule was five days a week from 3:00pm until 11:00pm, with a lunch break, for a total of 7.5 hours per day and at most 37.5 hours of work per week.
15. It is my understanding that Plaintiff worked a similar scheduled when employed by Rest Corp.

16. The Restaurant's schedule did not vary during the entire period of Plaintiff's employment. As far as I know it never stayed open later, nor opened earlier, such that Plaintiff would have been required to adjust her schedule accordingly.

Sworn to before me this 19th
day of February 2021


Notary Public.

YODERKA VARGAS
Notary Public, State of New York
No. 31-4897353
Qualified in New York County
Commission Expires June 01, 2023


Raul Ryan Acosta